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HOUSE BILL 3190 By  
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SENATE BILL 3308  
By Rochelle

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 29  
and Title 7, Chapter 86, relative to emergency  
communications districts.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. The general assembly finds that the "Emergency Communications District Law" has been successfully embraced by the vast majority of Tennessee counties, most of which have already initiated basic or enhanced 911 service and are developing or maintaining this lifesaving service in furtherance of the purposes stated in the law. The general assembly also finds that the establishment of emergency communications services for all citizens of the state will promote the public interest. The general assembly further finds that statewide wireless enhanced 911 service is in the public interest.

SECTION 2. Tennessee Code Annotated, Section 7-86-102, is amended by inserting the following language, to be designated subsection (b), and by re-designating the present sections accordingly:

(b)(1) The general assembly finds that the establishment of a uniform emergency number to shorten the time required for a citizen to request and receive emergency aid is a matter of public interest and concern. The general assembly finds also that the continued viability of the lifesaving 911 emergency communications service is of the highest priority for the health and safety of the citizens of Tennessee.

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(2) The general assembly finds that the effectiveness of 911 service depends on the ability of emergency service providers to timely respond to persons requiring emergency assistance; further, that the response by such providers is directly affected by the nature and coverage of the telephone and radio communications network available within a community, the quality of which is often limited by the availability of financial resources in the community.

(3) The general assembly finds that the rapid technological advancement in the area of telecommunications has provided the public with wireless and other mobile telecommunications services. The general assembly also finds that in recent rules and orders, the federal communications commission has mandated wireless enhanced 911 service for all commercial mobile radio service users and subscribers, contingent upon the authorization and establishment of a mandated cost recovery mechanism for both commercial mobile radio service providers and emergency communications districts by the general assembly. The general assembly finds further that subscribers and users of commercial mobile radio service are enjoying the benefits of 911 service without paying a monthly service charge that is used to fund 911 service in Tennessee. The general assembly recognizes that all subscribers and users of commercial mobile radio service should share equally in the benefit of 911 service and should participate in the funding thereof.

SECTION 3. Tennessee Code Annotated Title 7, Chapter 86, is amended by adding Section 1 and Sections 4 through 14 of this act as a new and appropriately designated part.

#### SECTION 4.

(a) There is created in the department of commerce and insurance an emergency communications board (hereinafter, "the board") for the purpose of assisting emergency communications district boards of directors in the area of management, operations, and accountability, and establishing emergency communications for all citizens of the state. Notwithstanding the provisions of any law to the contrary, effective July 1, 1998, the board shall exercise its powers and duties, in accordance with the provisions of this act, relative to all

emergency communications districts established pursuant to this chapter or by any public or private act.

(b) The board shall be composed of nine (9) members as follows:

(1) One (1) member, appointed by the governor, who has no connection to emergency communications districts and who does not fulfill any other requirements for appointment to the board;

(2) The comptroller of the treasury or the comptroller's designee;

(3) One (1) representative of county government, who shall be appointed by the governor from a list of three (3) nominees submitted by the Tennessee County Services Association;

(4) One (1) representative of city government, who shall be appointed by the governor from a list of three (3) nominees submitted by the Tennessee Municipal League; and

(5) Five (5) members, appointed by the governor, who shall either be current directors of emergency communications districts or current members of emergency communications district boards of directors at the time of their appointment. The governor shall appoint these members either from a list of three (3) nominees for each position submitted by the Tennessee emergency number association, or from a nomination by a joint resolution of not less than four (4) emergency communications districts from across the state.

(6) Nominations shall be made not less than thirty (30) days before the end of a term, and shall be filed with the governor and the board.

(7) In appointing members, the governor shall strive to ensure that the composition of the board represents the diversity of persons in Tennessee by considering race, gender, age, and geographical and political interests.

(c) Members shall be appointed to four (4) year terms except as provided in this subsection. Two (2) of the members appointed by the governor shall be appointed to serve an initial term of two (2) years, two (2) such members shall be appointed to serve an initial term of three (3) years, and the remaining four (4) such members shall be appointed for an initial term of four (4) years. The governor may select the members whose initial terms are less than four (4) years. Thereafter, such members shall be appointed and serve four (4) year terms. Members appointed by the governor may be appointed to successive terms.

(d) The board shall elect a chair and any other officers as it may deem necessary for two-year terms.

(e) The board shall meet at least quarterly, or as otherwise needed.

(f) A majority of those appointed shall constitute a quorum, and all official action of the board shall require a quorum.

(g) All meetings of the board shall be subject to the provisions of Tennessee Code Annotated Title 8, Chapter 44, and Tennessee Code Annotated Title 10, Chapter 7.

#### SECTION 5.

(a) In order to effectuate the purposes of this part, the board has the power and authority to:

(1) Promulgate rules and regulations in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5, for the conduct of the affairs of the board;

(2) Adopt a seal for the board, prescribe the style thereof and alter the same at pleasure;

(3) Subject to the provisions of Title 9, Chapter 6, appoint and fix the salaries and duties of such experts, agents, and employees as it deems necessary;

(4) Make and enter into contracts;

(5) Accept gifts, grants, or other moneys and to receive appropriations which may be made by law;

(6) Give advisory technical assistance to any emergency communications district upon request;

(7) Establish technical operating standards for emergency communications districts and periodically review and revise wireless enhanced 911 standards based on orders and rulings by the federal communications commission (FCC);

(8) Establish operating standards concerning acceptable uses of revenue for emergency communications districts and periodically review and revise these standards;

(9) Respond to requests from emergency communications districts or commercial mobile radio service providers, and subject to availability of funds, review and approve requests for reimbursements for expenditures to implement, maintain, or enhance statewide wireless enhanced 911 service in conformance with any rules or orders of the federal communications commission, and other federal and state requirements that pertain to wireless enhanced 911 service;

(A) The board shall determine the method of reimbursement to commercial mobile radio service providers and emergency communications districts that will also ensure the long-term stability and solvency of the 911 emergency communications fund, in consultation with the comptroller of the treasury.

(B) The board shall also consult with the comptroller of the treasury concerning a minimum acceptable level of reserves to fund the future costs associated with the federal communications commission order.

(10) Establish financial accountability and accounting standards in consultation with the comptroller of the treasury for emergency communications districts;

(11) Review the rate structures of individual emergency communications districts. The board may raise the non-commercial mobile radio service rates of an individual emergency communications district to the maximum established in Section 7-86-108(a)(2)(A); provided, however, that the district meets financial and operational criteria established by the board in consultation with the comptroller of the treasury;

(12) Take such action as is necessary to ensure that the board of directors of an emergency communications district satisfactorily addresses valid concerns of citizens, cities, counties, and other governmental entities located within a district's service area;

(13) Study the possible consolidation or merger of two (2) or more adjacent emergency communications districts if the board determines that one such emergency communications district is financially distressed. In the event that the board determines that such a consolidation or merger is in the best interest of the public, and after holding public hearings within the service areas of the existing emergency communications districts, the board may order the consolidation or merger. The board shall establish rules and policies concerning the composition and selection of the board of directors, and shall establish technical and operating standards and a rate structure for such multi-jurisdictional emergency communications district; provided, however, such action shall not threaten the financial integrity or stability of the affected emergency communications districts, or the level and quality of 911 service;

(14) Order that an election be held, pursuant to Section 2-3-204, to submit to the voters of an area without emergency communications service, the question of creating such an emergency communications district. In the election to be held, the questions submitted to the qualified voters shall be “For the Emergency Communications District”, “Against the Emergency Communications District”. Upon approval by a majority of those voting, an emergency communications district is created in accordance with the provisions of Tennessee Code Annotated, Title 7, Chapter 86;

(15) Review any decision of the board of directors of any emergency communications district affecting its financial standing and its level or quality of 911 service;

(16) Remove for cause any member of the board of directors of an emergency communications district. The board's decision to remove a member shall constitute a decision or order of the board. Any such member of the board of directors shall continue to serve until cause is finally determined;

(17) From time to time, submit to the speakers of the general assembly its suggestions for proposed amendments to this chapter;

(18) Exercise all the powers and take all the actions necessary, proper, or convenient for the accomplishment of the purposes enumerated herein; and

(19) Appoint advisory committees for the purpose of providing and receiving information to the board, the number of members on such committees shall be determined by the board. Such committees may include, but not be limited to, local government officials, consumers, 911 service users, law enforcement personnel, fire fighting personnel, and emergency medical services personnel. Members of such advisory committees shall not be voting members of the board. No member of any such

advisory committee is entitled to a salary for duties performed as a committee member. No member is entitled to reimbursement for travel and other necessary expenses incurred in the performance of official duties.

(b) Any party adversely affected by a decision or order of the board may, within thirty (30) days of the action of the board, initiate a contested case as provided by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5, which shall be heard by an administrative law judge sitting alone.

In the conduct of any hearing upon request or complaint, the board may receive evidence in the form of affidavits in addition to minutes, transcripts, and other evidence of actions by the emergency communications district, and the board may render its decision thereon or, if it shall deem an open hearing appropriate, may order the interested parties notified of the date, time, and place that the hearing will be held;

SECTION 6. The board shall appoint a technical advisory committee, the number of members to be determined by the board. The technical advisory committee shall be composed of representatives of commercial mobile radio service providers and non-commercial mobile radio service providers for the purpose of providing and receiving operational and technical information and advice on all aspects of wireless enhanced 911 service. The technical advisory committee members shall not be voting members of the board. No member of this committee is entitled to a salary for duties performed as a member of the committee. No member is entitled to reimbursement for travel and other necessary expenses incurred in the performance of official duties.

#### SECTION 7.

(a) The comptroller of the treasury is directed to develop a uniform financial accounting system conforming to generally accepted accounting principles for use as required by this



section. Effective July 1, 1999, each emergency communications district shall use the uniform accounting system developed by the comptroller of the treasury.

(b) The annual audit of all emergency communications districts shall disclose the failure of any district to maintain such a financial accounting system as prescribed by the comptroller of the treasury. The comptroller of the treasury shall file with the board a copy of the audited financial statements of each emergency communications district pursuant to Section 7-86-113. The board shall have authority to act upon any adverse findings noted in such audits and/or financial statements and to order such action as may be necessary to remedy the adverse findings.

(c) The board of directors of each emergency communications district shall file with the board a copy of its annual budget, prepared in accordance with Section 7-86-120.

(d) Any emergency communications district that is a financially distressed emergency communications district shall be subject to the supervision and evaluation of the board. For the purposes of this chapter, a "financially distressed emergency communications district" is a district which, as shown by the annual audits:

- (1) Fails to produce revenues sufficient to provide for all expenses and maintenance of the district, including reserves thereof, for a period of three (3) consecutive years;
- (2) Has a deficit retained earnings balance; or
- (3) Is in default on any indebtedness.

After reviewing the financial statements of any financially distressed emergency communications district, and after holding a public hearing within such district's service area, the board may prescribe a rate structure, within the maximum established pursuant to Section 7-86-108(a)(2)(A), to be adopted by the district, as may be necessary to cause the district to liquidate

in an orderly fashion any retained earnings deficits and/or to cure a default on any indebtedness of the district.

(e) After reviewing the financial statements of any emergency communications district and determining that such district is accumulating excess reserves or retained earnings, and if the district is not able to justify such accumulation of revenues, and after holding a public hearing, the board may prescribe a rate structure to be adopted by the district as may be necessary to cause the retained earnings to fall; provided, however, such rate is adequate to cover reasonable costs of operation, and does not threaten the financial integrity of the district or the quality and level of 911 service.

(f) If the board of an emergency communications district fails to adopt the prescribed rate structure, the board may, in addition to any and all other remedial actions available to it, petition the chancery court in a jurisdiction in which the emergency communications district is operating to require the adoption of the rate structure prescribed by the board or such other remedial actions, which, in the opinion of the court, may be required to cause the district to be operated in accordance with the provisions of state law.

#### SECTION 8.

(a) The board shall develop and implement a plan for providing 911 service and wireless enhanced 911 service to all citizens of Tennessee. The plan shall provide for:

(1) A schedule for the implementation, installation, operation, maintenance, and enhancement of statewide wireless enhanced 911 service;

(2) A review and analysis of progress maintained by existing emergency communications districts in complying with technical, operating, and financial standards adopted by the board;

(3) A plan for each emergency communications district not meeting technical, financial, and operating standards as established in this part by the board to come into compliance with such standards; and

(4) An implementation schedule that will account for the progress achieved by each district in attaining and maintaining financial, technical, and operating standards.

(b) The board shall encourage and promote the planning, development, and implementation of 911 service for each newly created emergency communications district. The board shall approve a plan for each such district, which shall include specific local requirements. Such plan shall include, but not be limited to, law enforcement, fire fighting, and emergency medical services and may include, but not be limited to, other emergency services such as poison control, animal control, suicide prevention, and emergency management services.

Such plan shall include funding requirements necessary to implement and operate the 911 system; provided, however, that if anticipated revenues are not adequate to achieve and maintain technical and operating standards as established by the board in this part, the board shall undertake a study to determine other options for the provision of 911 service to that area.

(c) All new 911 system plans shall be approved by the board prior to implementation.

(d) The board shall promulgate any necessary rules, regulations, and schedules for implementing and coordinating a 911 system plan, and shall act as the deciding agency whenever disputes arise or agreements cannot be reached between the emergency communications district and other governmental units involving the 911 system.

(e) The board shall not require the commercial mobile radio service providers to select or deploy particular commercial solutions to meet any federal communications commission rulings or orders, or other requirements concerning wireless enhanced 911 service, provided the solutions chosen are compatible with the operations of emergency communications districts and the technical and operating standards for wireless enhanced 911 service adopted by the board.

## SECTION 9.

(a) The board's budget shall be subject to approval by the general assembly.

(b) No member of the board is entitled to a salary for duties performed as a member of the board. Each member is entitled to reimbursement for travel and other necessary expenses incurred in the performance of official duties in accordance with the state comprehensive travel regulations as promulgated by the commissioner of finance and administration and approved by the attorney general.

(c) The board shall be funded through a charge, established pursuant to Section 7-86-108(a)(1)(B), on all commercial mobile radio service effective January 1, 1999. No such service charge shall be levied on the trunks or service lines used to supply such service to wireless systems.

(d) Any funds collected by the board shall be deposited in the state treasury in a separate interest-bearing fund to be known as the 911 Emergency Communications Fund. Disbursements from this fund shall be limited solely to the operational and administrative expenses of the board and the purposes as expressed in this act. The board shall use such funds for the primary purposes of funding the operational and administrative costs of the board; providing payments established in subsection (e); implementing, maintaining, and enhancing wireless enhanced 911 service throughout Tennessee; and establishing 911 service throughout Tennessee. At no time during its existence shall the 911 Emergency Communications Fund be used to fund the general expenses of the state of Tennessee.

(e) The board shall distribute twenty-five percent (25%) of the revenue generated by such a charge to each emergency communications district created either pursuant to Section 7-86-105 or this part, based on the proportion of the population of each district to that of the state, according to the 1990 or subsequent census. Such funds shall be used at the discretion of

each district for the provision of 911 service in accordance with the provisions of this chapter. Such distribution shall be made thereafter as soon as possible in accordance with the provisions of this act.

(f) Any funds collected in excess of the annual fiscal requirements of the board, which shall include the payments to emergency communications districts established in subsection (e), shall not revert to the general fund. Any unspent funds at the end of a fiscal year shall be carried forward to the next fiscal year to be used as a beginning balance for the fiscal requirements for such fiscal year. The board shall, at its discretion, and following policies, procedures, and criteria it has developed, use any remaining funds to provide grants for operating and capital expenditures for basic or enhanced 911 service and wireless enhanced 911 service to assist emergency communications districts created either pursuant to Section 7-86-105 or this part. Such grants may be renewed by the board.

(g) After providing for all necessary and reasonable operating and administrative expenses of the board, which shall include the payments and grants established in subsections (e) and (f), and after implementation of statewide wireless enhanced 911 service pursuant to standards established by the board, which shall include the present and future costs associated with required and necessary implementation, operation, maintenance, and enhancement of statewide wireless enhanced 911 service, and after establishment of 911 service throughout Tennessee pursuant to standards established by the board, any excess revenue may be distributed to each emergency communications district created either pursuant to Section 7-86-105 or this part, for the purposes of promoting uniform 911 service, those purposes stated in the law, and the provisions of this chapter; provided, however, that such distribution is possible and practicable, does not threaten the solvency of the 911 Emergency Communications Fund, and is consistent with Section 5 of this act.

SECTION 10. The board shall report annually to the governor and the speakers of the general assembly on the activities of the board for the preceding year. The board shall receive and consider from any source whatsoever, whether private or governmental, suggestions for amendments to this chapter.

SECTION 11. After the effective date of this act, no referendum to allow the creation of a new emergency communications district within the boundaries of an existing emergency communications district shall take place without prior approval by the board. In the event that the board determines that such a creation is in the best interest of the public, and after holding a public hearing within the service area of the existing emergency communications district, the board may order that a referendum be held, provided, however, that such action shall not threaten the financial integrity or stability or the level or quality of 911 service of the existing emergency communications district.

SECTION 12. A 911 call for a communication which is for some purpose other than to report an emergency or an event which the person placing the call reasonably believes to be an emergency is a Class C misdemeanor.

SECTION 13. Notwithstanding any other provision of law to the contrary, the board shall promulgate rules and regulations to safeguard proprietary information submitted to the board. Such rules and regulations shall be consistent with determinations, actions, customs, and practices of the Tennessee regulatory agency with respect to proprietary information. Any information determined to be proprietary in accordance with such rules and regulations shall be confidential and shall not be open to the public for inspection, notwithstanding the provisions of Tennessee Code Annotated, Title 10, Chapter 7.

SECTION 14. Nothing in this chapter shall be construed to constitute the regulation of the entry or of rates charged by commercial mobile radio service providers for any service or feature that they provide to their commercial mobile radio service customers, or to prohibit a

commercial mobile radio service provider from charging a commercial mobile radio service subscriber for any service or feature provided to such customer.

SECTION 15. Tennessee Code Annotated, Section 7-86-103, is amended by deleting subdivision (5) in its entirety.

SECTION 16. Tennessee Code Annotated, Section 7-86-107, is amended by deleting subsection (a)(2) in its entirety.

SECTION 17. Tennessee Code Annotated, Section 7-86-107(a), is further amended by deleting the language “four (4) methods” and substituting instead the language “three (3) methods”.

SECTION 18. Tennessee Code Annotated, Section 7-86-103, is amended by adding the following as a new subdivision:

( ) “Public safety emergency services provider” means any unit of local government that provides emergency services to the public. Such providers and/or services include, but are not limited to, emergency fire protection, law enforcement, police protection, emergency medical services, poison control, animal control, and suicide prevention.

SECTION 19. Tennessee Code Annotated, Section 7-86-107, is amended by inserting the following language, to be designated subsection (b), and by re-designating the present sections accordingly:

(b) Provided, however, each public safety emergency services provider retains the right to dispatch its own services, unless a voluntary agreement is made between such provider and the board of directors of the emergency communications district.

SECTION 20. Tennessee Code Annotated, Section 7-86-103, is amended by adding the following as new subdivisions:

( ) "Commercial mobile radio service provider" means any person, corporation, or entity licensed by the federal communications commission to offer commercial mobile radio service in the state of Tennessee, and shall include, but not be limited to, broadband personal communications service, cellular radio telephone service, geographic area specialized mobile radio services in the 800 MHz and 900 MHz bands that offer real-time, two-way voice service that is interconnected with the public switched network, incumbent wide area SMR licensees, or any other cellular or wireless telecommunications service to any service user.

( ) "Commercial mobile radio service" means commercial mobile radio service under Sections 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C. §151, et seq., the Omnibus Budget Reconciliation Act of 1993, and 47 C.F.R. §20.9, and includes service provided by any wireless two-way communication device, including radio telephone communication used in cellular telephone service, personal communication service, or the functional and/or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communication service, or a network access line. This term shall also include, but not be limited to any and all broadband personal communications service, cellular radio telephone service, geographic area specialized mobile radio services in the 800 Mhz and 900 Mhz bands that offer real-time, two-way voice service that is interconnected with the public switched network, incumbent wide area SMR service, or any other cellular or wireless telecommunications service.

( ) The term "federal communications commission order" means the Order of the Federal Communications Commission , FCC Docket 94-102, adopted on June 12, 1996, and released on July 26, 1996, and any subsequent amendment thereto, and includes other federal communications commission rules and orders relating to commercial



mobile radio service providers, commercial mobile radio service, and wireless enhanced 911 service.

Tennessee Code Annotated, Section 7-86-103, is further amended by deleting the language "as used in this part" and by substituting instead the language "as used in this chapter".

SECTION 21. Tennessee Code Annotated, Section 7-86-108, is amended by renumbering subsection (a)(1) to (a)(1)(A), and by adding the following language as new subdivisions:

(a)(1)(B)(i) Commercial mobile radio service subscribers and users shall be subject to the emergency telephone service charge, a flat statewide rate, not to exceed the business-classification rate established in Section 7-86-108(a)(1)(A), the exact rate to be determined by the board. Such rate is subject to the approval of the commissioner of finance and administration. It is the intention of the general assembly that such rate be established at the lowest rate practicable consistent with the purposes of this act. The charge shall be assessed on all commercial mobile radio service subscribers and users whose principal wireless service address (or billing address if wireless service address is not known) is in Tennessee. No such service charge shall be levied on the trunks or service lines used to supply such service to commercial mobile radio service systems. Such proceeds shall be paid to the board, and shall be deposited in the 911 Emergency Communications Fund. No other state agency or local government entity may levy an additional surcharge relating to the provision of wireless enhanced 911 service.

(a)(1)(B)(ii) Each commercial mobile radio service provider shall remit the funds collected as the service charge to the board every two (2) months. Such funds shall be remitted to the board no later than thirty (30) days after the last business day of such

two-month period. The commercial mobile radio service provider shall be entitled to retain as an administrative fee an amount equal to three percent (3%) of its collections of the service charge. The commercial mobile radio service provider shall be authorized to demand payment from any service user who fails to pay any proper service charge, and may take legal action, if necessary, to collect the same from such service user, or may, in lieu thereof and without any liability whatsoever to such service user for any losses or damages which result therefrom, terminate all service to such commercial mobile radio service provider; provided, that any service user so terminated shall have the right to resume service from the commercial mobile radio service provider as long as the service user is otherwise in compliance with the regulation of the commercial mobile radio service provider, upon full payment of all past due service charges and any other costs or expenses, including reasonable interest, or normal costs or charges of the commercial mobile radio service provider for the resumption of service, incurred by the commercial mobile radio service provider and the board as the result of any nonpayment. However, the commercial mobile radio service provider shall annually provide to the board an accounting of the amounts billed and collected and of the disposition of such amounts. Such accounting shall be subject to audit or review by the comptroller of the treasury.

(a)(1)(B)(iii) Commercial mobile radio service providers shall collect the service charge on behalf of the board as part of their monthly billing process and as a separate line item within that billing process. The service charges collected under this subsection shall not be subject to taxes or charges levied on or by the commercial mobile radio service provider, nor shall such service charges be considered revenue of the commercial mobile radio service provider for any purposes.

(a)(1)(C) The board shall also use such funds created in subsection (a)(1)(B)(i) for the purposes described in Section 9 of this act.

SECTION 22. Tennessee Code Annotated, Section 4-29-221(a) is amended by adding the following as a new item:

( ) The Emergency Communications Board, created by Section 4;

SECTION 23. The provisions of this law shall take effect July 1, 1998, the public welfare requiring it.